

"The Hanafi Code of Muslim Law does not provide for the dissolution of marriage by a Court at the instance of married Muslim woman. In circumstances justifying dissolution like failure to provide maintenance, cruelty and desertion the doctrine of the Shafi and Maliki jurists are not binding on Hanafi women. Eminent Ulema have, therefore, issued Fatwas that in cases enumerated in this Bill a married Hanafi Muslim woman may obtain from court a decree for dissolution of marriage. In response to persistent public opinion in favour of legislation incorporating the provisions of Shafi and Maliki law in this matter, the dissolution of Muslim Marriage Act (Act VIII of 1939) was passed in British India. In Cochin we have the Muslim Women's Marriage Dissolution Act."

We have already an Act like that of 1108. But that Act is not wide enough. It does not contain some of the grounds under which a lady can get her divorce under the present Bill. So, the present Bill, after all, is an amplification and a widening of an existing statute of our State.

"But it is not as comprehensive as the British Indian Act. The necessity, therefore, of the adoption of the British Indian Act in Cochin is widely felt by the community. Besides, the Cochin Act does not contain any provision regarding the effect of apostacy on Muslim marriages. Courts in applying Anglo Mohamedan Law have held that apostacy of a married Muslim woman *ipso facto* dissolves her marriage. The Ulema have issued Fatwas challenging that view and the Muslim community has also expressed its supreme dissatisfaction with it. The present Bill is intended to meet the wishes and opinions of the community on both the above-mentioned points."

I believe for such a self-evident and progressive measure of this kind, I need not plead very much before this House whose reforms tendencies are well-known. In case the House will be pleased to accept the principle of the Bill. I would be only glad to refer the Bill to a Select Committee. I request that the House be pleased to accept this Bill at this stage.

Mr. A. V. Moothedan (Chalakkudi) : Is this Act similar to the British Indian Act.

Mr. K. M. Ibrahim (Cranganur) : Yes.

Mr. V. K. Kutty (Nominated) : I second it.

Mr. A. V. Moothedan (Chalakkudi) : I have pleasure to support this motion, because according to my principle, British Indian laws should be applied to Christians wherever they are in India, to Muslims wherever they are in India and therefore on that principle I strongly support this motion and my Hon'ble friend has given the assurance that he wants only the British Indian Act. I therefore support the motion.

Mr. M. Sivarama Menon (Advocate-General) : Government do not oppose this Bill at this stage.

Motion put and carried

Secretary to the Council : The title of the Bill is "The Cochin Dissolution of Muslim Marriage Bill".

Mr. K. M. Ibrahim (Cranganur) : I beg to move that the Cochin Dissolution of Muslim Marriage Bill be referred to a Select Committee consisting of the Mover, Messrs Ismail Hajee Issa Sait, V. K. Kutty, Khan Sahib Y. Mohamed Roshan Sahib Bahadur, T. P. Poullose, the Advocate-General and the Hon'ble Deputy President.

Motion put and carried

Deputy President : The report is to be submitted within 4 months. The Advocate-General will be the Chairman of the committee.

(3) The Cochin Municipal Act (Amendment) Bill

Mr. A. Eachara Menon (Chittur-Rural) : Sir, This is a Bill to amend Act, XVIII of 1113. In Chapter III section 13(1) there is a provision that in the case of Municipalities whose income is above Rs. 75,000, a Commissioner may be appointed. My proposal is to omit the words whose income is above Rs. 75,000. It was at my instance that this was put in before; because I thought that even the appointment of a Commissioner on a small pay would affect the income of the Municipalities whose income is below Rs. 75,000. Why I have brought this now is stated in the Object and Reasons:

"This conditional clause was inserted by the fear that the pay of the Commissioner would be a great drain on the slender financial position of Municipalities which have only an income of less than seventy-five-thousand rupees. But it is feared that Chairmen who are young and who are new to official routine are not only incapable of managing the business but do not also keep on the policy extant thereby causing loss to the Municipalities. To provide against

such a contingency it is proposed to invest the Government with the power to appoint Commissioners to the Municipalities wherever they think necessary. Hence the Bill." This is a very simple bill. I propose to invest the Government with power. I do not think Government has any need to object to the Bill. No Government has done this before. In my bringing this amendment now, it may be said that I have been moved by the present affairs of the Chittur Municipality. I do not go into the matter now. I shall do so after hearing the Government opinion on the matter.

Mr. A. V. Moothedan (Chalakkudi) : I second it.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri) : On a point of information, which are the Municipalities now in existence having Commissioners?

Mr. M. Sivarama Menon (Advocate-General) : Ernakulam, Mattancheri, Trichur.

Deputy President : The House is adjourned till 2—30.

The House adjourned for lunch at 12-55 p.m. and reassembled at 2-30 p.m. with Rao Sahib K. Ayyappan, B. A., Deputy President in the Chair.

***Mr. P. P. Devassy (Trichur-South)** : Mr. President, Sir, I am very much surprised to find that an amendment which seeks to take away the powers of a self-governing body and appropriate the same to the Government has at this time come from the non-official side of this House. It has always been the desire of the non-official body to appropriate from the Government as much powers as possible to the self-governing institutions of this country. Even the appointment of the commissioners in the major municipalities of the State has not been welcomed as a very pleasant thing by the public of this country. It has been reckoned as fortunate that at least the minor municipalities have been exempted from the operation of the particular section which at an unfortunate time in the administration of this country came into the Statute Book. Now, I had some experience also in the working of one of the major municipalities of this country. I was also for some time, for a short period, I think for nearly one month, acting as the Chairman of the Trichur Municipality. Even during that period I had occasion to see how at time the executive has stood in the way of the satisfactory working of the municipality by the non-official section, viz., the Council. It has been from time to time found in the working of the Trichur Municipality of which only I have had the experience that the wishes of the non-official part of the municipality could not actually be carried into effect on account of certain obstructions placed by the executive thereof. I do not wish to refer to any particular individuals who have acted as the Commissioners of the Trichur Municipality. Apart from individuals, the law gives certain powers to the executive authority of a municipality to put obstacles in the way of the decisions of the Council being carried into effect. It may be that in a particular municipality a young chairman might have muddled and might have created confusion out of ignorance or whatever that be in the mind of the Hon'ble mover, for moving this amendment, that does not justify a change in the law of the country to impose executive authorities on all the minor municipalities. I would say that it is opposed to all progressive thinking, it is opposed to all ideas of self-government, it is opposed to all ideas of people being given more and more share, more and more hand in the administration of their own affairs, to ask the Government to have an executive authority for the minor municipalities, however small their income be. If the Chairmen of these small municipalities are not conversant with the ways of administration, with the details of the management of the municipal affairs, it is not unavoidable. That want of experience should be compensated only by the appointment of an executive authority. An able and experienced Manager will be able to give as and when occasions arise the necessary advice to the young, inexperienced chairman, if there be in these small municipalities. Our municipalities had been working before this new Act came into force, without executive authorities and I do not believe it is the case of the mover of this amendment that havoc has been wrought in the administration of these municipalities. There are special circumstances and special cases which actually arise for the consideration of the appointment of executive authorities. But unfortunately some opinion against the administration of a municipality, the personnel of the administration, has given rise to the appointment of an executive authority. It will be and it should be the effort in this country to see that if possible the executive authorities are removed even where they exist rather than invite the curtailment of the public rights, of the people's claim to associate themselves and to participate in the administration of their own affairs. I would, therefore, request the Hon'ble Members of this House to consider the very serious implications involved in this amendment, however, short it be, namely it takes away from the people the power to participate in the administration of their own affairs.

*Speech not corrected by the Hon'ble Member.

We are clamouring for self-government, we have been passing resolutions requesting His Highness to grant us full powers with regard to the administration of the country. We have been clamouring for the transferring of more portfolios into the hands of Ministers elected by this Council. I do not know and with what grace it comes from the non-official side at this time to clamour for the appointment of executive authorities for Municipalities and take away our powers from our hands and to allow them to be appropriated by the Government. I request this House to take into serious consideration these far-reaching consequences that are likely to follow from this amendment and I oppose it.

***Mr. M. Sivarama Menon (Advocate-General):** Government fully realise that this Bill seeks to confer more powers on the Government. But as the House is aware, we are dealing with a Government which does not want to arrogate to itself powers which are not necessary for the common good; and powers will be asked for by Government only when there is a clear case in general made out for interference. With regard to this particular section 13, which appears in the Municipal Act today, the original Bill as drafted by the select committee which was constituted then, did not impose any such restriction on the power of the Government. Then the Hon'ble mover of this very Bill introduced an amendment at the time of the consideration of the Municipal Bill that the powers of Government should be curtailed to the extent of placing a restraint upon the Government in this sense, that Government shall not have power to appoint executive authorities in the case of municipalities whose income is below Rs. 50,000. When that amendment was tabled by the Hon'ble Member, Dr. A. R. Menon tabled an amendment to the amendment to the effect that the sum of Rs. 50,000 may be still further enlarged and convert into Rs. 75,000. If the Hon'ble House goes through the proceedings at the time when section 13 was discussed on the floor of this House, it will be found that this was practically a hot issue which was opposed every inch and it was on account of the practically wholesale opposition of the non-officials that the Government agreed to the acceptance of this amendment of Rs. 75,000 as amended by Dr. A. R. Menon. Now, after that, has anything transpired to satisfy the Government that the acceptance by the Government of the amendment in spite of the mood of opposition, which the Government adopted at that time, to cast a blot on the administration of Municipalities for which there are no Commissioners appointed under the present Act? That is the question. There must be a finding to the effect that self-governing Municipalities whose income is below 50,000 rupees, are in general or at least in a majority of cases not discharging their functions properly, for the Government to agree even to the acceptance of this power that is sought to be conferred upon the Government. When the policy of the Government is to encourage self-governing institutions as far as possible taking advantage of the fact that a non-official member has brought the Bill, Government are not going to support it unless and until a clear case has been made out for the acceptance of that power. Now if there is a case that there is mal-administration, on account of a young gentleman being the Chairman, then I say the Act itself should provide that the Municipal Chairmen should be of a certain age; and if youth is not a disqualification, can it be said that old age is a qualification? If old age is a qualification the Statute must also lay it down. Therefore, that is not the purpose of section 13 of the Act. Government wish to point out to the House that the existing powers possessed by the Government under the very Municipal Act are entirely sufficient to deal with a case of this nature.

I would first of all invite the attention of this House to section 38 (1) of the Municipal Act which says that if a Municipal Council fails to discharge duties which it is bound by law to carry out, then Government shall issue an order to the effect that they shall perform their duty within such and such a time and if the Municipality does not carry out that function, then Government has the power to get that done by an officer appointed by the Government itself. Therefore; if there is a failure to discharge the duties of a Municipality Government have got power under section 38 (1). Then there is section 41(1) of the Municipal Act which empowers the Government to remove any Chairman or Vice-Chairman from Office for proper reasons as stated in the Act. Now the Chairman have got only limited powers and expenditure above a certain figure has to go through the formality of the sanction of the Council. If a Council fails to discharge its duties section 38 can be brought into operation. If it is on account of his failure, section 41 (1) confers the power upon the Government to take appropriate action against that officer.

Then there is the provision for a no-confidence motion. In cases where the

* Speech not corrected by the Hon'ble Member.

Council finds that a chairman is not really acting up to the wishes of the majority and the interests of public good, the Council has got the right to bring a no-confidence motion against the Chairman or Vice-Chairman. That is not restricted to any previous sanction of the Government or of any other extraneous body. What I say is it is within the absolute control of the Council to pass a no-confidence motion. It is not even laid down that proper reason should be adduced or that the non-confidence motion would not be respected by Government. If the majority of the members are guilty with the Chairman and the Vice-Chairman there is section 44. Section 44 confers upon the Government power to supersede the Council. If it persistently makes default in carrying out the functions and duties given to it under the statute then the entire council can be superseded after giving the Council an opportunity to show cause why it should not be done. That is only in consonance with the principle of natural justice. So when the Chairman or Vice-Chairman or the whole Council has made default in performing any duty there is section 38 (1). If the failure is of a permanent nature there is section 44 and there is a further power on the Government to remove the Chairman or Vice-Chairman. These powers are in general found to be quite sufficient for the purpose of controlling any bad situation that may arise. Over and above these there is the personal risk attached to every Council as well as to the Chairman. There is a section in the Municipal Act namely Section 356. I think I will do well to read that section because the other sections are well known. Under section 356 it is laid down—"The Chairman, every Councillor and Executive Authority shall be liable for the loss, waste or misapplication of any money or other property owned by or vested in the Municipal Council if such loss, waste or misapplication is a direct consequence of his neglect or misconduct and a suit for compensation may be instituted against him by the Council subject to Government sanction....

Every such suit shall be commenced within three years after the date on which the cause of action arose."

Therefore, if in a minority there is a definite case that on account of mal-administration the loss of public funds entrusted to the care of that body, has resulted there is nothing which prevents anybody from seeking Government sanction for the institution of a suit because where public justice has to be vindicated by a minority this section has been particularly enacted. Hon'ble Members may also be aware that Municipalities are subject to half-yearly audits by the Office of the Comptroller of Accounts. The Municipal Chairman and whole staff, are really terribly afraid of the audit by the Comptroller's Office and they take care to see as far as possible that no condemnatory remarks happen to be passed by the Office of the Comptroller because they have to keep up the self-respect of the Chairman.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri): Honest Chairman need not be afraid.

Mr. M. Sivarama Menon (Advocate-General): If no Honest Chairman need be afraid no Honest Government need be afraid to seek the redress provided for under law. Therefore, there has been no case in general made out for Government accepting this power which has been offered by this amending bill and if we go back as I said before, to the history of the section it will be found that it was a non-official triumph to get this section passed in that House. When Government have found as a matter of fact that no case is made out Government are constrained to oppose his Bill even though this Bill seeks to confer more powers upon the Government.

Mr. A. Eachara Menon (Chittur-Rural): Sir, when we heard the Trichur Member, I thought nobody in this House ever understood that some democratic power was to be conferred on the public at large, by this bill and I am well aware that such a power vested in the public. I know I was the cause for appointing Commissioners for the Municipalities whose income was Rs. 75,000. I have already stated it in my Objects and Reasons. I have not kept it secret. If the Hon'ble Member for Trichur found that the Commissioners stood in the way of the Council acting in its own way, I am extremely sorry. It is because the chairman does not carry on the duties of the Council properly that I want a Commissioner. I only thought that such an enabling measure shall be passed by the Government. Advocate-General said that Government did not find any reason to interfere. A simple reason I shall place before the House. There was an order from the Government that the minutes of the meetings should be written in the book kept for it at the time of the meetings by the Chairman. The Chittur Chairman was obstinate in not doing it. That was brought to the notice of the Government more than once.

CLUBBING CERTAIN BACKWARD COMMUNITIES WITH THE PULAYAS FOR PURPOSES 603
OF THE STAFF SELECTION RULES

Mr. M. Sivarama Menon (Advocate-General): Which Chairman please?

Mr. A. Eachara Menon (Chittur-Rural): The Chairman of the Chittur Municipality. No action has been taken by Government till now. I do not want to give you a detailed account of it now.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri): Will it be remedied by the appointment of a Commissioner?

Mr. A. Eachara Menon (Chittur-Rural): The Advocate-General had been detailing to you all the powers vested in the Government for removing the Chairman, for taking the Chairman to task. Whether they have done or is going to do so in the matter of the Chittur Municipality is yet to be seen.

Mr. M. Sivarama Menon (Advocate-General): You bring the allegations and proof.

Mr. A. Eachara Menon (Chittur-Rural): I do not want to bring the allegations now, because I understand that they are under consideration. A vote of censure is quite impossible to bring, because it has been stated in this Council by somebody that people get themselves elected by some unknown means and the Chairman also gets himself elected by unknown means. In that case, how is it possible to get the consent of $\frac{2}{3}$ of the members in a Council of 16.

Mr. M. K. Devassy (Adur): Was not the Hon'ble Member himself a Chairman?

Mr. A. Eachara Menon (Chittur-Rural): Certainly I was for a long time and I would have continued if I had recourse to questionable means. The Advocate-General said that Government possesses the powers of supersession. Circumstances have changed. We ought to adapt ourselves to circumstances.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri): What are the changes except the personnel of the Chairman? I should like to know that.

Mr. A. Eachara Menon (Chittur-Rural): It is almost in a sort of sub-judice. When the Government comes forward to oppose it, I think there is some under-current working.

Mr. M. Sivarama Menon (Advocate-General): This allegation I most emphatically repudiate and Government will never spare any Municipality be it Chittur or any other Municipality if there is mal-administration.

Mr. A. Eachara Menon (Chittur-Rural): I emphatically assert it.

Deputy President: Mr. Eachara Menon, you will have to substantiate your statement.

Mr. A. Eachara Menon (Chittur-Rural): Once it has been brought to the notice of the Government. Government have taken no action on it. That is my inference. Not only that, I do not think that favouritism cum nepotism can go any further than as can be seen by the opposition of the Government.

Motion put and lost

(4) The Cochin Tenancy Act (Amendment) Bill

Mr. V. J. Mathai (Planters): From what has been stated by the Hon'ble Advocate-General yesterday, I find that the whole question of renewal fee is going to be considered and reconsidered by the Government. In fact on the floor of this House during the last session of the Council I had the good fortune of bringing a resolution to the effect that the whole tenancy legislation should be revised. That resolution is still before the eyes of Government. I am very glad to find, and I ought to congratulate the Government—that it has been responsive to the wishes of the House. I want to make only one statement. When the Verumpattam Bill has been accepted and has become law, to me it appears that there is no basis for renewal free for other tenures, because the other tenures are being considered as more favourable than a verumpattam tenancy. When the verumpattam tenant gets fixity of tenure without renewal fee, it stands to reason that the others should be brought at least to that level. That is the object and provocation of this Bill. Now that a very responsive and sympathetic statement has been made by the Government, I believe it is unnecessary to move the Bill at present. I, therefore, do not move it now.

RESOLUTIONS

Resolution No. 26—(cont.)

Clubbing certain Backward Communities with the Pulayas for purposes of the Staff Selection Rules

മിസ്റ്റർ പി. കെ. കുഞ്ഞു: സർ, ഞാൻ ഈ പ്രമേയത്തെ എതിർക്കുന്നതു പലയരല്ലാത്ത അധികൃതർക്ക് ഉദ്യോഗം കിട്ടാതിരിക്കുവാനല്ല; അവർക്കു ശരിയായി ഉദ്യോഗം കിട്ടേണ്ടതിലേക്കാണ്. ഓരോ സമുദായത്തിനും കണക്കുപ്രകാരം അര ശതമാനം ഉദ്യോഗമേ